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TAGS: [PGOV](#) [IT](#) [ITALIAN POLITICS](#)

SUBJECT: ITALIAN PM BERLUSCONI HEADING BACK TO THE DOCK

REF: ROME 0122

Classified By: A/POLMINCOUNS JOHN BASS FOR REASONS 1.5 (B) AND (D)

1. (C) Summary. A suspended corruption trial against PM Berlusconi will resume this Spring. A new three-judge panel that will decide his case may be more favorable to him than the team it replaced. Berlusconi's defense lawyer told the Embassy he thinks the trial will wrap up quickly and that there is a good chance the PM will not be found guilty of judicial bribery. To head off any verdict, the Government will reintroduce as a constitutional bill the ordinary immunity law that was annulled by the Constitutional Court on January 13. Berlusconi's leadership of the center-right majority is secure for now. Only in the event of a guilty verdict followed by a poor center-right performance at the June European elections would his position atop the governing coalition be called into question. End Summary.

2. (U) As we reported reftel, a suspended Milan-based corruption trial in which PM Berlusconi is the featured defendant will re-start in the Spring following the Constitutional Court's annulment of a June 2003 immunity law. Berlusconi will face the same hard-nosed prosecutors who were on the verge of moving to closing statements when the proceedings were suspended in June by the Schifani Law (reftel). However, the case will be decided by a new set of judges.

3. (C) Francesco Castellano, chief of the three-judge panel that will adjudicate the case, is a moderate (Note: Most Italian magistrates belong to one of several associations that roughly correspond philosophically with Italy's main political parties. End Note), who in another corruption trial against Berlusconi found the PM innocent. Gaetano Pecorella (strictly protect), a key member of Berlusconi's defense team (in addition to his role as President of the House of Deputies Justice Committee), told us on January 16 he believes the new judges are on the whole less biased than the previous team.

4. (C) Castellano is weighing the possibility of putting the proceedings on a special fast track that will make any delaying tactics by the defense more difficult. Pecorella said he believes the case could be wrapped up in a month or two once it kicks off. Pecorella told us there are solid grounds for believing that Berlusconi will be found not-guilty; he reportedly was against a legislative fix, believing that the case against Berlusconi is weak. He argued that the Milan Court's November 2003 decision to find Berlusconi's former lawyer Cesare Previti not guilty on judge-bribery charges should work in the PM's favor. (Note: Previti was sentenced to five years in prison on lesser corruption charges. Both he and Berlusconi were being tried in the so-called SME Case, which stems from the 1985 proposed sale of the then-State-owned SME food holding company. Berlusconi is accused as an accessory to judicial bribery in complicated judicial proceedings arising from the eventual sale. In May 2003, the Milan court decided to separate the prosecution of Prime Minister Berlusconi from other defendants, including Previti. End Note)

5. (C) Meanwhile, the Government is examining its legislative options. An assistant to Senator Renato Schifani told us on January 15 that the Government will submit to Parliament a constitutional bill to try to solve the immunity conundrum. The Constitutional Court's full decision explaining the legal rationale for annulling the regular Schifani Law probably will be released next week. The technical details of the decision will determine how much room the center-right majority has to merely reintroduce the Schifani Law as a constitutional bill. Another option being considered is the reinstitution of full parliamentary immunity--partially lifted in the wake of widespread political corruption in the early 1990s--which could help PM Berlusconi as he also has a seat in the House of Deputies.

6. (C) Comment: The Constitutional Court decision is creating some turbulence for PM Berlusconi, as it comes on top of another significant legislative defeat (Note: President Ciampi's decision to remand to Parliament for further review a television broadcast system reform bill. End Note) and a push by some of the governing coalition's junior partners for

a reshuffle. Nevertheless, it does not threaten Berlusconi's still undisputed leadership of the center-right. The outcome of an eventual guilty verdict (if a constitutional law was not passed and upheld by the High Court in the meantime) is tricky to predict. Berlusconi has said repeatedly he will not resign if the Milan court decides against him. Moreover,

if the decision comes before the European Elections in June, we think he is likely to rely on them as a referendum on his leadership. If his Forza Italia party and the center-right do well, a guilty verdict would fade from view. However, a guilty verdict combined with a poor performance at the polls could, for the first time since Berlusconi took office in June 2001, place his position atop the governing coalition in question. End Comment.

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